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Supreme Court, U.S.
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No._____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

ENRICA STUART,

Petitioner

vs.

CITY OF RANCHO PALOS VERDES, ET AL.

Respondents

PETITION FOR A WRIT OF CERTORIARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTORIARI

ENRICA STUART
80 Narcissa Dr.
Rancho Palos Verdes
California, 90274
Petitioner In Pro Per
(310)377-7608

66 pp

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QUESTIONS PRESENTED

1. Under Article VI, Section 2 of the U.S. Constitution, can local Rules of Courts be used to limit intrinsic rights protected by the Constitution under Amendments I, V and XIV?

2. Did the Court of Appeals err by denying Petitioners a review and, subsequently, permission to file a notice of an error that was entered into the record by the Court of Appeals and was detrimental to the issues on appeal?

3. Did the California Superior Court err in ignoring the essential and substantive issues in Plaintiffs' Action, thus agreeing, by inference, with issues and Defendants that never stood for trial. Did the Court err in basing its decision solely on the issues submitted by the Plaintiffs in the

consolidated case against their Defendant, even though Petitioners had submitted a motion for bifurcation of issues and had pointed out, in their opening speech, the problem of their divergent issues and Defendants?

4. Can local governments use the issue of litigation to hold secret meetings with private parties in order to devise a "novel idea" that could circumvent the law and deprive others of due process? Can they enter into secret contractual obligations that would allow them to impose unlimited assessments on unsuspecting property owners who were not a party to the lawsuit?

5. What constitutes a "taking of property"? What are the standards and parameters of the "police power" and "clear and present danger", as they

relate to a "taking of property?"

Can a small group of property owners, arbitrarily selected in secrecy and without their knowledge and consent, be held financially responsible for extensive research and massive projects that benefits mostly a public road, a public beach and private persons and interests and, in the process, expose Plaintiffs-Petitioner to the risk of losing their property through exorbitant liens?

----------*----------

PARTIES TO THE PROCEEDINGS

Plaintiffs in Los Angeles Superior Court

Case No. BC 018326:

Enrica Stuart
Charles Stuart
James Pugh
Alyce Snell
Kathleen Snell
Orma Stewart
Catherine Stewart
Craig Ehlenberger
Diana Halderman
Jack Downhill
Robert Bauer
Rea Bauer
Tindara Mollica
Charles Himelwright
William Roberts
Thomas Black
Maria Jacobson
Edith Bustrom (deceased)

Defendants in Los Angeles Superior Court

Case No. BC 018326:

City of Rancho Palos Verdes,
Redevelopment Agency of the City of Rancho Palos Verdes,
County of Los Angeles
Board of Supervisors of the County of Los Angeles.

Plaintiffs in Los Angeles Superior Court

Case No. BC 018276:

Rancho Palos Verdes Resorts, Inc.

Palos Verdes Land Holdings.
(Intervenor)

Defendants in Los Angeles Superior Court

Case No. BC 018276:

County of Los Angeles.

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CITY OF RANCHO PALOS VERDES, ET AL.

Respondents

PETITION FOR A WRIT OF CERTORIARI TO THE CALIFORNIA SUPREME COURT

OPINIONS BELOW

The order of the California Supreme Court is not reported,(App. A). The orders of the Court of Appeals are not reported, (App.B-1-2-3-4-5). The ruling of the Superior Court is not reported, decision in (App.C).

JURISDICTION

The order of the California Supreme Court denying a petition for review was entered on February 23, 1994, (App.A).

The orders of the Appellate Court denying a petition for rehearing and notice of misstatements were entered Dec. 17, 1993, (App.B-1). The decision of the Superior Court was filed June 2nd, 1993, (App.C).

This Court has jurisdiction over this matter pursuant to 28 U.S.C. 1257(a). The issues were raised by Complaint, by Writ of Mandamus, by Motions, and at each stage.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

QUOTATIONS ARE IN APPENDIX "D".

The Constitutional provisions at issue in this matter are Article VI,

Amendments,IX, X, Article I, Amendment V, IV XIV of the United States Constitution. (Appendix D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, respectively).

Article I Sections 1, 3, 7, (a) and (b), Sect. 19; Article III, Sect. 1, 3; Article IV, Sections, 1, 8(b) Article VI, Section 13, Article XVII Section. 19 (a) and Article XI of the California Constitution and California Government Code, Section 54950 (Appendix D-9, D-10, D-11, D-12, D-13, D-14, D-15, D-16, D-17, D-18, D-19, respectively)

STATEMENT OF THE CASE

A. INTRODUCTION

Adulteration of intrinsic constitutional rights through abuse of power is a national problem.

Petitioner believes this case is a

classic illustration of the cumulative offenses that can ensue from an initial act of abuse of power perpetrated within a protective safety-net of "political correctness". This abuse arises from the corrupting potentials of easily adulterated legislative and legal decisions. Therefore, an abbreviated chronological description of pertinent events as they unfolded is submitted.

Although it is a noted historical fact that the Supreme Court's decisions, figuratively, tend to swing like a "pendulum", at no time has the Supreme Court challenged the fundamental precepts of the supremacy of the U.S. Constitution in those areas affecting the essential rights and sovereignty of the people in the manner in which it is

being challenged at the local level.

Petitioner noted the concern for "timeliness", expressed by this Court in Lucas v South Carolina Coastal Council, 505 US - 120 L Ed 2d 798,112 S Ct. (1992).

Being In Propria Persona, Petitioner would not presume to know what determines "timeliness". However, on the basis of this case, Petitioner questions how and when the Federal Constitution was abrogated and hope this Court will decide that the time is ripe for a decision that will stop a runaway train of abuses.

Petitioner, admittedly simplistic, is basing her claim and deriving her conclusions from the clear and pristine form by which the Fourteenth Amendment re-states that which is already implied

in Article VI of the Constitution.

Article VI leaves no room for questions regarding the supremacy of the Federal Constitution and its Amendments. It states:

> ". . .the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary, not withstanding" (Appendix D-1)

In comparing Amendment IX with Amendment X, Petitioners noted that the Constitution leaves little doubt as to where sovereignty rests.

Under Amendment IX it is clearly stated that but for those rights enumerated by the Constitution, all other rights are retained by the people.

In addressing State Rights however, under Amendment X, from which the "Police Power" was derived, the

Constitution takes a significantly different approach by using the words,

". . .nor prohibited by it to the States, are reserved to the States respectively, or to the people." (Appendix, D-2, D-3)

Petitioner could find nothing in the Constitution implying that local governments, either through legislative acts, precedents, or "police power", as derived from the various Supreme Court decisions, could declare themselves "sovereign" and claim "sovereign immunity" from constitutional challenges by the people.

In fact, most of this Court's initial decisions relating to Police Power, arose from claims between the States and the Federal Government regarding Article I Section 8, Clause 3,

(The Commerce Clause) and Clause 18, (The Power Clause) of the Constitution (Appendix D-4).

Even Justice Marshall, the father of the "Police Power" evolution, in Gibson v Ogden, 9 Wheaton 1, (February Term, 1894), as well as subsequent decisions, took considerable care to avoid any suggestion of State Supremacy when it referred to the police power of the States vs. constitutional, or natural rights, of the individuals. He carefully side-stepped the issue (Appendix E-5)

In Home Building & Loan Association v. Blaisdell, 290 U.S. 398 (1934) Chief Justice Hughes, who was more inclined to bend toward State Rights, was concerned about the possibility of abuse of police power. In his decision supporting the

emergency statute of Minnessota, he carefully described the degree of the emergency and chaotic and disastrous, state-wide, conditions which made the State decision a necessity (Appendix E-6)

In this Petitioner's case however, Plaintiffs were denied the right to bring a constitutional complaint against local governments, or argue on constitutional grounds, against the frivolous and abusive use of the police power and the State's, badly written, Emergency Clause.

Should this Court of last resort find this case and its issues relevant and timely, it would give Petitioner its first opportunity to have the case heard and judged on the constitutional issues on which it is based.

B. ANTECEDENT HISTORY OF THE CASE

Plaintiffs-Petitioner in this case are all residents and owners of properties in a semi-rural, gated community known as "Upper Abalone Cove", on the Palos Verdes Peninsula in Southern California.

In 1978, forty-nine people claiming physical and value damages to their properties as a result of a land slide caused by poor drainage, filed a lawsuit against the City of Rancho Palos Verdes, ("City") and the County of Los Angeles ("County") for negligence. The case is known as Horan et al v County of Los Angeles, et al.

The slide was stopped by the installation of dewatering wells paid for with voluntary contributions from neighbors in the Abalone Cove community.

The voluntary effort was later organized into an assessment district known as Abalone Cove Land Slide Abatement District, (ACLAD).

The District encompasses only the Lower and Upper Abalone Cove areas of the gated community and consist of one - hundred and ninety parcels of property.

On November 27, 1984, the City established a Community Redevelopment Agency ("Agency").

In January of 1985, the County filed a complaint to block the Agency.

Soon after the County filed its complaint, members of the City Council approached Horan et al. with a "novel idea" that they claimed would settle all pending law suits, would give the Horan et al. plaintiffs generous cash settlements, issue them below prime rate

loans, and grant the Agency seventy-five million dollars ($75,000,000.00) in tax increments and fifteen million dollars ($15,000,000.00) in cash for use in slide abatement projects demanded by Horan et al. for the Abalone Cove area, as well as work in the adjacent, ancient, active slide area of Portuguese Bend.

A "Panel of Experts", selected jointly by Horan et al., the Agency and the County, would determine and implement the necessary projects.

Horan et al. accepted the proposal and agreed to two separate Settlement Agreements: One, between Horan et. al. and the County, in which Horan et al. would bind the County to a second settlement agreement, a Reimbursement and Settlement Agreement, to be

concluded with the City and the Agency.

The Settlement Agreement between Horan et al. and the County included a commitment by the County to issue an initial ten million dollars ($10,000,000.00) in Bonds for work in the Abalone Cove area, secured by the same properties already being assessed under the, privately organized, Abalone Cove Landslide Abatement District (ACLAD).

The ten million dollars assessment (10,000,000.00) was to be followed by an additional five million dollars ($5,000,000.00), for work to be performed in the ancient, active, land slide area of Portuguese Bend. That area is not included in the ACLAD assessment district, nor in the present County assessment district.

The Settlement Agreement between the County and Horan et al. includes the following conditions:

". . . as a material consideration for Plaintiffs to enter into this Settlement Agreement. . . " (App.F-1).

the County will assure the sale of bonds in accordance with the Reimbursement and Settlement Agreement ("RSA")with the City and Agency (Appendix F-1).

During the interim, between the signing of the Resolution of Intention by the City and the hearings on the assessment district, County advanced one million four-hundred and fifty thousands dollars ($1,450,000.00) to the Agency, to be repaid from the initial ten million dollars ($10,000,000.00) in bonds the County planned to issue. (Appendix, F-3).

There is no question therefore,

that County had committed itself to issue the bonds before holding hearings.

(1) PETITIONER QUESTIONS THE CONSTITUTIONALITY OF THE HORAN ET AL. REIMBURSEMENT AND SETTLEMENT AGREEMENT

During the first and subsequent public hearings held by the Agency to inform the residents of the proposed projects to be undertaken pursuant to the Horan et al. Settlement Agreements with the accompanying issuance of Bonds, Petitioner, through the services of an expert and an attorney, questioned the validity and constitutionality of the Reimbursement and Settlement Agreement.

In accordance with (Kern County Builders, Inc. v. North of the River Municipal Water District, 214 Cal App. 3d 805, 814 (1989), Plaintiffs

questioned the fact that most of the property owners being assessed were not a part of the Horan et al. law suit, nor had they been informed of the Reimbursement and Settlement Agreement before it was an accomplished fact. They also questioned the reliability of the statistics being presented regarding the tax increments, pointing out that they were incorrect and misleading. They asserted that there had been a breach of California Government Code Section 54950 (The Brown Act) as well as the Ist Vth, and XIVth Amendments of the U.S. Constitution (Appendix D-19, D-6, D-8, respectively).

Petitioner believes their claims were supported by: Blake v Eureka, 201 Cal. 643, 258 p. 645 (1927); The People v City of Los Angeles. (1923) Cal. App.

62 p. 782 Civ. No. 4173; Miles Salt Co. v Board of Commissioners, 239 U.S. 36 S Ct. 204 (1970) (Appendix,E-2, E-10, E-9, respectively).

C. PLAINTIFFS BEGIN PROCEEDINGS

Due to assurance by the City, the Agency and Horan, et al. that no liens would be forthcoming from the County's Assessment District and, should said liens be forthcoming the tax increment would cover them, in accordance with Rules of Court and Zattenberg v State Department of Public Health (1974) 43 Cal App3d 657, 662, 118 Cal Rprt. 100, (Appendix, E-11), Plaintiffs waited for the County's notice of liens and the amount thereof before initiating legal action.

The range of the liens, on the ten

million dollars ($10,000,000.00) Assessments was, at the time, for these Plaintiffs, between thirty-thousands ($30,000.00) and ninety-thousands dollars ($90,000.00). In six years, when due and payable the original liens, with interest, will be fifty-five thousands ($55,000.00) to one-hundred and ninety thousands ($190,000.00); with more to come as the experimental slide abatement project continues.

(1) HEARING OF THE BOARD OF SUPERVISORS

At the County's hearing of November 29, 1990, it was noted by Supervisor Mike Antonovich, that over seventy-five percent (75%) of the property owners were protesting the constitutionality, validity and denial of due process of the Horan, et al.

Agreement and its resulting County Assessments. County Counsel pointed out that by declining to implement the Horan et. al Settlement Agreements and issuing the bonds, County would be open to legal action by Horan, et al. His statement was supported by the Attorney for Horan et al. and the former Mayor of Rancho Palos Verdes, Douglas Hinchliffe, who had negotiated the Agreement with Supervisor Deane Dana (Appendix F-4)

On December 4, 1990, Supervisor Dana moved to overrule the protest for "public convenience and necessity" under Article XVII, Section 19 of the California Constitution (Appendix, D-18) It passed without discussion.

It was evident that the decision had already been made behind closed doors.

(2) IN SUPERIOR COURT

On January 3, 1991, Plaintiffs filed two separate Actions under the name of Enrica and Charles Stuart, et al., referred to as, Stuart, et al.

One, a Writ of Mandamus against the County and the Board of Supervisors ("Board") to "set Aside The County Improvement District."

Two, a Constitutional Complaint against the City, the Agency, the Board and the County, "To Determine the Validity of the Proceedings; for Declaratory and Injunctive Relief, the First, Fourth and Fifth Amendments of the Constitution of the United States and Div. 4, Calif. Street & Highway Codes".

On the same day, Rancho Palos Verdes Resorts, Inc. ("RPVR"), filed a

Writ of Mandamus against the County on the Assessment District.

The City responded to Stuart, et al.' actions, the County demurred and responded on all actions.

At the hearing on County's demurrer against Stuart, et al.' Writ of Mandamus, the Court dismissed County's demurrer for lateness.

At the hearing for the Complaint Judge Stephen E. O' Neil, forgave the County's lateness, agreed with County's objection to Plaintiffs' constitutional complaints and County's assertion that the Board of Supervisors, acting in a legislative capacity, was not subject to constitutional challenges and gave Plaintiffs ten days to amend.

County demurred again on the ground that Plaintiffs had a separate Writ of

Mandamus pending against the County and the Complaint contained constitutional allegations involving the City that were not applicable to the County and Standard of Review. City did not appear.

Petitioner, concerned that the case might be dismissed, settled the issues by stipulation. The Writ of Mandamus and the Complaint were consolidated with the Complaint as the leading case. The Complaint was amended to County's satisfaction.

On June 3, 1991, Horan, et al. submitted a "Notice of entry of order granting Plaintiffs' notice of motion and motion to compel enforcement of written settlement agreement" (App.F-2).

County issued the bonds and placed the liens despite pending litigation and RPVR's request for an injunction.

Subsequently County filed for consolidation for all purposes of Stuart, et al.'s Complaint and RPVR's Writ of Mandamus.

Stuart, et al. objected to consolidation for all purposes on the ground of divergent issues with RPVR's Intervenor, Palos Verdes Land Holding ("PVLH"), who had supported the Horan et al. Settlement Agreements at the hearing but entered RPVR's case to obtain a legal assurance that it could develop its property.

Commissioner Murray Gross informed Petitioners that there were no differences between consolidation for all purposes and consolidation for certain issues only, thereby approving the consolidation.

Subsequently, Stuart, et al.,

filed for Severance of certain issues, in accordance with Points and Authorities: (National Elec. Supply Co. v Mt. Diablo Unified School District, (1961) 9, Cal. Rptr. 864, 167, C.A. 2d 418) (Appendix, E-7) (Bratton & Moretti v. Finerman & Son, (1959) 171 Cal App2d 430 435, 340 Ped 673) (Appendix,E-3) and by submitting evidence of conflict with PVLH. Motion was denied.

Just prior to the Final Status Conference, the City filed a Motion for "Summary Judgment or, in the Alternative, a Judgment on the Pleadings" against Stuart, et al., claiming the case did not apply to the City but only to the County Assessment District, other facts being "immaterial".

Judge Charles Lee denied the City's motion on the ground that it had not answered all the issues and allegations, such as ". . . fraud, conspiracy and other triable issues. . . " (Appendix F-5).

During the Mandatory Settlement Conference the City filed the following request and Motions in Limine:

1. It went "Forum Shopping", requesting one of the two litigation judges agreed upon during the Horan Settlement Agreement, as stated in said Agreement.

2. Filed a Motion in Limine to transfer case No. BC 018326 to a Writ and Receivers Department.

3. Filed a Motion in Limine to Try the Case Without a Jury.

4. Filed a Trial Brief Respecting the

Standard of Judicial Review to be Employed in Evaluating the County's Legislative Adoption and Implementation of Improvement District 2651-M.

It became obvious that the Case of Stuart et al. was on its way to being shafted. Therefore, Stuart, et al., filed the following Motions In Limine:

1. "Bifurcation of Issues or a Protective Order of the Court".

2. Motion for "Leave to Amend to Conform to Proof".

3. Objections to "Forum Shopping for Judges".

4. Objection to "City's request for a Writ and Receivers Department" on the ground that the Administrative Record of the hearings by the Board, which the County planned to submit, did not

contain the proceedings of Horan et al., thus denying Stuart et al. a proper trial.

The City objected to all of Stuart, et al. Motions.

1. TRIAL BEGINS

On the first day of trial, Retired Judge Ralph Nutter proceeded to resolve the issues of Motions.

Plaintiffs in Stuart, et al. objected to being pigeonholed into a Standard of Review trial directed solely against the County Assessment District.

It was pointed out to the Court that the purpose of the "Motion for Severance of Issues, or a Protective Order of the Court" was to ensure that Stuart, et al. Constitutional Complaints be addressed and the issue of the

validity of Horan et al. be determined.

On the Motion to "Amend the Complaint to Conform to Proof", Stuart et al. stated that it was necessary due to the City's various Motions and assertions of not being the party to the Action, having been brought into it with "immaterial facts". Consequently Petitioners wished to use more direct and specific words to clarify to the City the constitutionally material relevance of these "facts".

The Court resolved the issue of "Motion to Amend" in a trade off with Defendants on the issue of a jury trial.

The Court further resolved the issue of Bifurcation by stating that it had jurisdiction over both scopes of trial, CCP 1085 or CCP 1094.5, with CCP 1085 allowing the Court to review all

records and evidence and address all issues, not only those in the administrative record.

On that note of assurance Stuart, et al. withdrew their motion for bifurcation and request for a jury trial.

Because Plaintiff, Rancho Palos Verdes Resorts, Inc., had filed for Chapter 11 the trial was continued to February 4, 1993.

In its opening remarks, on the day of the trial, Stuart, et al., re-stated that their case went beyond the County Assessment District. Furthermore, if the issue of the Validity and Constitutionality of the Horan et al. Agreements were settled in their favor, the issue of any and all assessment districts enacted pursuant to Horan et

al. would be moot.

After the opening remarks, Petitioner, by prior agreement, allowed the attorneys for RPVR and Intervenor PVLH, to address their case and issues firsts. The attorneys felt that the case of Stuart et al. against the City might, unduly, complicate their more simple case against the County.

On February 5th, due to the absence of the RPVR's Attorney, Judge Ralph Nutter suggested that the case be continued with written, instead of oral, arguments.

At that point the City again asked the Court to dismiss the claim of Stuart, et al. against the City and Horan, et al.. since it did not apply to them or the case at issue. Judge Nutter ordered the City's Attorney to

argue that point in his brief.

The City, in its written arguments, never addressed the allegations and causes of action filed by Stuart, et al., against the City regarding Horan et al., instead, it restricted its argument to a support of the County's position. Nor did Judge Nutter hold the City's attorney to the Court's order to argue the point in his brief.

The Court did not address the issues of constitutionality and validity of Horan, et al., as requested by Petitioner in the Complaint, nor the request for "Declaratory Relief" from any and all liens, present and future, imposed in compliance with the Horan et al. Settlement Agreements.

The City and the Agency, although present at the trial, never stood for

trial on the case against them, consequently, the case of Stuart et al. never came to trial.

Petitioner believes Plaintiffs' allegations are supported by, among others, the following Points and Authority:

Cinmark Inv. Co v. Reichard (1966) 246 Cal App2d 498, 501, 54 Cal Rptr 810) (Appendix, E-4)

(Marina Development Co. v County of Los Angeles (1984) 155 Cal App3d 435, 443, 202 Cal Rptr 377 (Appendix E-8).

The Court, in its final Decision, included an erroneous statement, submitted by the City as a vital supporting argument, that the Horan et al. Agreements were upheld on Appeal. That claim had been rebuffed by Stuart et. al. during opening remarks. County agreed with Stuart, et al. that what went to trial and was upheld, was a

continuation, by Intervenors, of the County's case against the Agency.

A significant point in this case is the fact that, as the trial transcripts reveals, the Judge made a 180-degree turn from the direction of his questions and instructions during oral arguments. Petitioner in her written argument, followed the instructions, which did not address the validity of Horan et al.

The Court's written decision is a combined version of the "proposed decisions" submitted by City and County.

2. IN THE COURT OF APPEALS

Stuart, et al., major concern in approaching the Court of Appeals was how to separate themselves from the RPVR's case against the County.

Stuart, et al. being familiar with the modus operandi of the City

City and its Attorneys, knew how well the shell game had been put together and how futile it was to go against the County's Assessment District.

The only weak spot and true cause of action was the Horan, et al. Settlement and its constitutional issues. This became even more evident by Defendant's constant effort to pigeonhole these Plaintiffs into a case they could control.

On that basis, Stuart, et al. decided to accept the decision of the Court on the County Assessment District and appeal only on the Horan, et al. issues, and so stated in the documents filed with the Court of Appeals. Therefore, in accordance with that decision, before filing the Appeal, Petitioner checked with the Clerk of

Court regarding the issue of consolidation and were told that unless a motion for consolidation was filed, Stuart et. al. would have a separate filing number. Since no motion had been filed Stuart, et al. was given a separate case number.

County however, filed a motion for dismissal of all the cases for tardiness under the Act of 1913, which applied only to the Assessment District.

Petitioner, again called the Court to verify their case was still separate and the County's motion would not involve its case. It was separate.

On November 29, 1993, Petitioner received a letter from the Court of Appeals, addressed to Rancho Palos Verdes Resorts, Inc., stating that County's Motion for Dismissal had been

granted (Appendix B-2)

That was followed by another letter, again addressed to RPVR, stating that: "Both Requests for Judicial Notice--Moot" (Appendix B-3).

The letters were not signed or stamped and since they made little sense Petitioner again called the clerk and again was reassured that the case of Stuart et.al. was filed separately under BO77395, but she had no explanation for the confusion. The clerk, however, agreed that Petitioner should file for a re-hearing as a means of clarifying the issue.

A motion for re-hearing was filed with complete details on the fact that Stuart et al. did not appeal the Court's decision in favor of the County Assessment District, but appealed for a

trial of their separate issues, none of which came under the Act of 1913.

On December 17, 1993, Petitioner received an official order that was even more confusing than the prior one. The order stated that:

". . . The cases were not consolidated in superior court; however, upon receipt of the notices of appeal, this court consolidated the cases number BO77395 and BO77706, with all future filing carrying the case number BO77706 only. . . " (Appendix B-1)

Petitioner concluded that the Court obviously had never read any of the documents filed by Petitioner or would not, by any logical conclusion, have made that statement.

Having concluded that the situation with the Court of Appeals was hopeless, Petitioner decided that it was mandatory that Stuart et al. regain their identity before filing with the California

Supreme Court, particularly since RPVR and Intervenor had filed a motion for dismissal of their case.

Hence, in accordance with California Rules of Court No. 29 (2), Petitioner, on December 27, 1993 filed a Notice of Misstatement. It was accepted for filing, then returned with a letter denying permission to file (App B-5)

3. IN THE SUPREME COURT OF CALIFORNIA .

The brief was submitted to the clerk of the Supreme Court under Stuart et al., with its original Superior Court number, but also mentioning the consolidated number. The clerk refused filing as prepared, stating that it must be listed as Rancho Palos Verdes Resorts, Inc. v County of Los Angeles.

As expected, the case of Stuart et al. was denied a hearing as "Rancho Palos Verdes Rasorts,Inc v County of Los Angeles, et al." (Appendix A)

V

REASONS FOR GRANTING THE PETITION

I

IN CONFLICT WITH ESTABLISHED RULINGS OF THIS COURT OF THE SUPREMACY OF CONSTITUTIONAL RIGHTS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW, WITH ABUSE OF DISCRETION.

Article VI, Section 2 of the U.S. Constitution clearly states that the Constitution is the ". . . supreme law of the land. . " and ". . . Judges in every State shall be bound thereby. . ".

And the XIVth Amendment states that ". . .no State shall make or enforce any law which shall abridge the privileges and immunities of a citizen of the Unites States. . ." (Appendix, D-1,D-8).

County Counsel in its demurrers, claimed that the Board of Supervisors was sitting as legislators when they approved the assessment district, therefore that was a legislative act protected by sovereign immunity.

The City claimed the Agency was exercising the "... taxing power of the Sovereign... " and all constitutional allegations in Stuart, et al. should be denied and the Complaint should follow the established Standard of Review format.

First of all the Constitutional allegations in Stuart et al. refer to the secret actions leading to the illegal Horan, et. al. Settlement Agreement and its content.

The Agreements are the antecedent causal factor that created the chain of

events which lead the County into imposing an Assessment District in a manner that resulted in a denial of procedural due process.

Therefore one cannot deny the essential nexus between Horan et al. and all that has, and will, follow from it.

Second, the Federal and State Constitutions are based on a separation of power that clearly defines how a legislative Bill or Statute can be enacted.

Third, nothing in the Federal or California Constitution, nor the Charters of Incorporation of the County, indicates "Sovereign or Legislative" immunity for the County. And Rancho Palos Verdes is not a Chartered City.

In fact, there is nothing indicating that their enactments are any

thing other than "ordinances" or "rules" subject to the General Laws of the State (Appendix D-20).

Article XI, Article III, Section 3, Article IV, Section 1 and Section 8 (b), of the California Constitution are not ambiguous on this issue. Only the Legislature can legislate general laws and it must do so in accordance with the separation of powers and clearly defined rules of procedure. Therefore, only the State Legislature can legislate (Appendix D-13, D-15)

To grant the County Board of Supervisors, or any Municipality, legislative immunity on ordinances is equivalent to granting them the absolute power of enacting Edicts.

Petitioner does not believe this is what was foreseen, or intended, by

Federal or State Constitutions. Instead, the assumption has evolved, by inference, from misconstrued and misapplied legal precedents. Inferences can be challenged.

Defendants are well aware of these legal facts. The real reason for their "immunity" argument was to pigeonhole the Constitutional Complaint of Stuart, et al. into a Standard of Review case and a Writ and Receivers Court in order to avoid questions regarding collusion, conspiracy and abuse of power, inherent in the Horan, et al. Settlement Agreements.

Petitioner believes the following Points of Authority support her claim:

> "Although actions may be taken to promote health and safety, the means adopted to accomplish that promotion must be reasonably appropriate for the purpose"

(Higgins v Santa Monica (1964) 62 Cal2d 24, 30-31, 41 Cal Rptr 396 P2d 41)

II

DECISION IS IN CONFLICT WITH RULES OF COURT, RIGHT TO A FAIR TRIAL, EQUAL PROTECTION OF THE LAW.

The Ist Amendments to the U.S. Constitution clearly state that the people have a right to ". . . petition the Government for redress of grievances. . . " and the XIVth Amendment states that:

". . .no state shall make or enforce any law which shall abridge the privileges and immunities of citizens. . .or deny any person within its jurisdiction the equal protection of the law" (Appendix, D-5, D-8)

Furthermore, since the Complaint of Plaintiffs was not a frivolous one but was an action of last resort to protect their homes, one would assume that the

Courts would not take such a cavalier approach to the issue and would apply due care to ensure that Petitioners be given a proper hearing, particularly when the infringements involved basic constitutional rights and a miscarriage of justice.

Was the charade which took place in the Court of Appeals an error or a clumsy attempt to railroad In Pro Per Petitioners, and thereby protect the Court and the System?

III

OPINION IS IN CONFLICT WITH THE ESTABLISHED RULING OF THIS COURT ON THE RIGHT OF A FAIR TRIAL AND EQUAL PROTECTION OF THE LAW.

The action of the Superior Court makes a mockery of justice. It abated the County and the City in a despicable

shell game that would deny Stuart, et al. a fair trial resulting in a grave miscarriage of justice.

Only a decision from this Court, reasserting the supremacy of the U.S. Constitution and clarifying the much abused term of "legislative immunity" and "police power" can bring honesty and rationality to the Judicial System.

IV

THE ACTIONS TAKEN, WITH ABUSE OF POWER, ARE IN CONFLICT WITH RULES OF THIS COURT, STATE COURTS AND THE RIGHT OF DUE PROCESS, EQUAL PROTECTION, OPEN MEETING LAWS AND RULES OF PROCEDURE.

City, Agency and County, in their implementation of the Horan, et al. Settlement Agreements, which they called "a novel idea," circumvented established rules and laws, at every level of Government.

The principal actors in this plan

had personal vested interests in the outcome of the proposal. Supervisor Dana received over one-hundred and thirty thousands dollars ($130,000.00) in campaign contributions from special interests who would benefit if the public road and surrounding area could be stabilized at the expense of a handful of residents.

Former Mayor Hinchliffe, with whom Mr. Dana negotiated the "novel idea" is a Principal in a Company which is a heavy contributor to Mr. Dana.

Mr. Dana himself uses the public road being stabilized, since he lives in Palos Verdes, and benefits from it.

The Settlement of Horan et al. involved politically ambitious people who wanted a redevelopment agency. Most of all it involved greed that lead to

the irresponsible abuse of poorly defined rules of law and specific parameters for the exercise of the "police power" and the taking of property, under the protective umbrella of legislative immunity.

But what is most relevant, at this time, is the convoluted shell game they were able to construct, in order to protect themselves and their scheme, in case of litigation.

Even if the Settlement Agreement between Horan et al. and the County did not violate the Brown Act, the Reimbursement and Settlement Agreement, tied to Horan, et al. surely did, because it is a public document which involved decisions affecting private property, with binding financial obligations so irresponsibly high it

placed people's property at risk without the owners' knowledge and consent.

A recent report released by the Council on the status of the tax increment admits that it will not be possible for the Agency to pay off the bonds as originally claimed.

Yet, despite that knowledge and its consequences, the City and Agency continue trying to divert more of the cost of the Horan et al. projects on to the same properties, through additional City Assessment, expenses that should have been paid by the revenues of the County bonds.

Is there no end to this insanity and irresponsible behavior?

Are such actions covered by the "police power" and protected by legislative immunity as it is claimed?

We think not. But if they are, shouldn't this Court re-establish a balance between "police power" and the Constitution? A "balance" that was tilted by the good-will "tinkering" of Constitutional Constructionists?

V

DEFINING THE PARAMETERS OF WHAT CONSTITUTES A TAKING OF PROPERTY AND THE PROPER USE OF POLICE POWER AND EMERGENCY POWER IS AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT, BUT SHOULD BE, ADDRESSED BY THIS COURT IN ORDER TO CONTROL ABUSE.

In Armstrong, et. al. v United States, 364 US 40, 4 L ed 2d 1554, 80 S Ct 1563 (1960) (App.E-1)

this Court decided to constrain some abuses of the "Taking Power" .

Under the Vth and XIVth Amendments the people should not be deprived of property without due process of law, or public property taken for public use without just compensation (App.D-6,D-8).

Of course one might bend semantics to say that no property is being "taken" in this case. And if these extortion victims, when the liens come due cannot pay and their property is foreclosed, Defendants might say "this is not condemnation but a default in payment."

There are people going to prison under criminal law for similar scams.

It would appear to this Petitioner that the Constitutional words "deprived of their property" does not specify any particular method by which they are to be deprived, as long as the result is a loss of property due to public action of any kind.

In six years, property owners, targeted as payers by the Horan et al. Agreements, will face the loss of all, or a substantial part of their property.

And that does not include ten years of anxiety, inability to obtain loans and an infringement on all those rights which the Constitution is committed to protect for its citizens.

And for what reason? So that a Panel of Experts may conduct experiments on slide abatement? Is it not bias and prejudice to target a small group of people with such burden?

It has been sixteen years since the slide occurred; over ten years since it was declared "under control" as a result of private financial efforts through ACLAD; seven years since the Horan et al. Settlement Agreements, and three years since the bonds were issued, yet, except for repairs on the public road and the beach, nothing has been done to implement the "emergency" projects

demanded by the Horan et al. Agreements, demands that will be met with additional assessments. What was the proclaimed "public emergency"?

CONCLUSION

These petitioners have only questions for this Court because only this Court can bring legal order over politically created legal anarchy.

Only this Court can make the landmark decisions that will occupy the vacuum that allows bad laws and precedents to infest the judicial system.

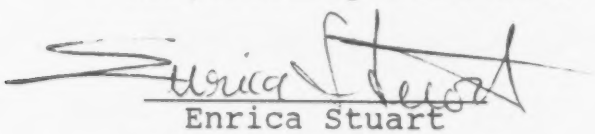
Only this Court can reassure the people that no scheme, no matter how clever, will be permitted to abridge the rights guaranteed by the Federal Constitution.

If this Court cannot sweep out the

cobwebs and let the light in, our judicial system has truly descended to what Roscoe Pound called " . . a holy body of rules . . .and mechanical jurisprudence"

Dated, May, 20, 1994

Respectfully Submitted



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Petitioner in Pro Per